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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. KEITH D. CAMPBELL, Defendant and Appellant.	B268045 (Los Angeles County Super. Ct. No. TA137163)

APPEAL from a judgment of the Superior Court of Los Angeles County. John Lonergan, Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle, Deputy Attorney General, and David A. Wildman, Deputy Attorney General, for Plaintiff and Respondent.

* * * * * * *

Defendant Keith D. Campbell was charged with making a criminal threat (Pen. Code, § 422; count 1), attempted arson (§ 455; count 2), being a felon in possession of a firearm (§ 29800, subd. (a)(1); count 3), resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1); count 4), and assault with a firearm (§ 245, subd. (a)(2); count 5). It was also alleged that defendant personally used a firearm as to counts 1 and 5, and that he had suffered six prior prison terms (§§ 12022.5, subd. (a), 667.5, subd. (b)). The jury found defendant guilty as charged, and he admitted his prison priors. On appeal, defendant challenges the sufficiency of the evidence for his attempted arson conviction, reasoning that dousing his sister's vehicle in gasoline was merely preparatory to the act of arson, and was not a direct act in furtherance of arson, because he never attempted to light the vehicle on fire. We affirm the judgment.

FACTS

On April 18, 2015, defendant was at his mother Sharon Steward's home. Los Angeles County Sheriff's Department deputies responded to a call that gasoline had been spilled on the front lawn of the home. When deputies Jason Puga and Javier Hernandez arrived at Ms. Steward's home, she and her daughter Sonique Steward were on the front lawn. Ms. Steward was "very frantic" and "upset." She reported that she had gotten into an argument with defendant, and that defendant had retrieved a sawed-off shotgun from the rear of her home, pointed it at her, and told her he was going to kill her and burn the house down. Fearing for her life, Ms. Steward called 911, but was disconnected. She then called her daughter. After Sonique arrived, Ms. Steward watched from inside her house as defendant poured gasoline on Sonique's Silver Ford Expedition.

Ms. Steward called 911 again. She soon heard sirens and saw defendant grab the shotgun and run to the rear of the house.

Sonique told police that she received a frantic call from her mother, reporting that defendant had pointed a gun at her. When Sonique arrived at her mother's home, she saw defendant burning something in the driveway. She confronted defendant about threatening their mother with a gun, and defendant became upset. Defendant went to the porch and picked up a red gasoline container, and poured gasoline on Sonique's car. There was a blowtorch nearby on the driveway. Sonique and defendant continued to argue, and when police sirens could be heard approaching, defendant ran to the back of the residence, and ultimately fled the scene.

Sonique confirmed that defendant owned a sawed-off shotgun that he kept in a storage room at the rear of the home. Sonique took Deputy Puga to the storage room where the gun was ordinarily kept, but it was not there.

Deputies recovered an empty red gasoline container from the home's driveway, and a blow torch which was 10 feet away from the gasoline container. They noticed a layer of "wetness" on Sonique's car, and the "smell of gasoline" emitting from the car. The sheriff department's arson team sampled the fluids on the car and from the gasoline can. According to arson detective Robert Harris, when he arrived at the scene at 11:00 p.m., the propane torch was "in the same area as the gas can." Detective Harris testified that a fire could be started by introducing an open flame to gasoline vapors. The arson team confirmed that the contents of the can and the fluid on the car were gasoline.

Later that evening, deputies received a call that defendant had returned to the residence. When deputies arrived, they saw

defendant in a car with his grandfather. When defendant saw deputies, he instructed his grandfather to "get out of here." Defendant refused to comply with orders to exit the vehicle. He had to be removed forcefully.

On May 12, 2015, deputies executed a search of Ms. Steward's home. When deputies asked if defendant had returned the gun to the home, Ms. Steward nodded "yes." When asked where it was, Ms. Steward pointed toward a desk. Deputies discovered a shotgun covered in a towel.

Ms. Steward testified at trial that defendant had simply "slapped" her mobile phone out of her hand as she was talking on it. She denied that she told police that defendant threatened to kill her or pointed a gun at her. She denied even calling police. Sonique also denied the statements attributed to her by police.

Defendant's cousin, Isaiah Garcia, testified that he was at Ms. Steward's on the evening of April 18, and that defendant and Ms. Steward argued, but defendant did not threaten her or pull a weapon on her.

Defendant also testified that he argued with his mother, and that he "smacked [his] hand up" near his mother, causing her to drop her phone. He denied threatening her or retrieving a gun. He also denied pouring gasoline on his sister's car.

DISCUSSION

" 'In reviewing the sufficiency of evidence . . . ,the question we ask is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." ' [Citation.] . . . 'In determining whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt, the appellate court "must . . . presume in

support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." ' [Citation.] The same standard also applies in cases in which the prosecution relies primarily on circumstantial evidence. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1175.) The reviewing court does not reweigh the evidence, evaluate the credibility of witnesses, or decide factual conflicts. (*People v. Culver* (1973) 10 Cal.3d 542, 548.)

"Any person who willfully and maliciously attempts to set fire to or attempts to burn . . . any structure . . . or property, or who commits any act preliminary thereto, or in furtherance thereof, is punishable by imprisonment in the state prison. . . . [¶] The placing or distributing of any flammable, explosive or combustible material or substance . . . in or about any structure . . . or property in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same . . . constitute an attempt to burn such structure . . . or property." (Pen. Code, § 455.) " 'In order to establish an attempt, it must appear that the defendant had a specific intent to commit a crime and did a direct, unequivocal act toward that end; preparation alone is not enough, and some appreciable fragment of the crime must have been accomplished.' " (*People v. Archibald* (1958) 164 Cal.App.2d 629, 633.)

Defendant contends that there was insufficient evidence to support a conviction for attempted arson because there was no evidence that he attempted to light his sister's car on fire. He cites a number of cases examining the sufficiency of the evidence for an attempted arson conviction, and notes that in each case the defendant had actually attempted to light fire to the structure or property. (*See People v. Beagle* (1972) 6 Cal.3d 441, 448; *People v.*

Mentzer (1985) 163 Cal.App.3d 482, 483; *People v. Cecil* (1982) 127 Cal.App.3d 769, 772-774.) However, none of defendant's cited cases stand for the proposition that a defendant is *required* to set fire, or to have tried to set fire, to the property or structure to be guilty of an attempted arson. This division previously affirmed an attempted arson conviction where the defendant entered a sheriff's station, reached inside a bag containing two wet strips of cloth smelling of gasoline and a gasoline container, and had a lighter in his other hand. He was arrested before he attempted to ignite the cloth. (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 983-984 (*Carrasco*).)

Here, like in *Carrasco*, defendant had all the instrumentalities to ignite his sister's car on fire. The jury could easily infer that the only thing that stopped defendant from burning his sister's car was that police vehicles were fast approaching.

DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.